



## WESTERN GOVERNORS' ASSOCIATION

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August 17, 2016

Honorable Gina McCarthy  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W. (1101A)  
Washington, D.C. 20460

Dear Administrator McCarthy:

The Western Governors' Association (WGA) appreciates the opportunity to provide comments on the Environmental Protection Agency's (EPA) federalism assessment for the agency's pending rulemaking under section 108(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) for the hardrock mining industry.

### STATEMENT OF INTEREST

WGA represents the Governors of 19 western states and three U.S.-flag islands. The Association is an instrument of the Governors for bipartisan policy development, information exchange and collective action on issues of critical importance to the western United States.

As stated in WGA Policy Resolution 2014-07, *Bonding for Mine Reclamation*,<sup>1</sup> all western states in which mining occurs have staff dedicated to ensuring that ongoing mine operations develop and follow appropriate reclamation plans. It is in Western states' legal and economic interest to assure hardrock mining facilities are designed, constructed and operated to minimize risks to the environment and ensure reclamation objectives will be completed. State regulators ensure proper mine closure on both private and public lands, and they coordinate with federal land management agencies to ensure financial assurance is adequate.

Western Governors understand EPA will soon publish a notice of proposed rulemaking (NOPR) under section 108(b) of CERCLA, pursuant to a D.C. Circuit court approval of a negotiated settlement between EPA and several non-governmental organizations.<sup>2</sup> Western Governors and state regulators have ongoing concerns regarding substantive and technical aspects of EPA's pending NOPR. Those matters are likely to be addressed in individual state and mining industry comments. This comment letter focuses on concerns surrounding the process by which EPA has approached this rulemaking.

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<sup>1</sup> Attached and incorporated by reference.

<sup>2</sup> Order *In re: Idaho Conservation League, et al.*, No. 14-1149 (D.C. Cir. Jan. 29, 2016).

## Rule Development Process Concerns

WGA Policy Resolution 2014-09, *Respecting State Authority and Expertise*,<sup>3</sup> articulates Western Governors' view of meaningful federal-state consultation. Governors believe federal agencies should consult with them and their regulators on a substantive basis at the earliest stages of problem identification and federal decision-making, prior to the publication of policy proposals. Consultation and engagement should continue through formal rulemaking and policy-making processes and during the implementation phase. While publication of this NOPR is mandated, EPA has not offered to engage in substantive consultation with Western Governors since late January.

The agency has recently chosen to engage with state partners on a perfunctory basis. EPA has not, however, engaged in substantive discussion of the pending proposed rule. The agency has been unwilling or unable to share a draft of the proposed rule or information regarding the formula EPA will use to calculate required financial assurance amounts.

Western Governors, the Interstate Mining Compact Commission (IMCC), the Environmental Council of the States (ECOS), and the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) have requested pre-publication review of EPA's proposed rule. Absent such review, these groups have requested from EPA substantive information on the proposed rule. That information has not been provided. EPA did not address concerns expressed or substantive questions posed in WGA's March 29, 2016 letter to your attention<sup>4</sup> during the May 18, 2016 federalism consultation meeting in Washington, D.C.; in EPA's June 9, 2016 response letter to WGA;<sup>5</sup> or in either of the "short-term working group" calls held with states on July 7 and 19, 2016.

In the March 29 WGA letter to EPA, Western Governors requested substantive consultation well before launch of a formal rulemaking. Western Governors further requested that they – and state regulators – be afforded an opportunity to review EPA's proposal before submission to the White House Office of Management and Budget for finalization. In addition, Western Governors requested EPA provide the following information:

- A detailed state consultation timeline and plan for obtaining individual state comments from Governors and state regulators;
- All technical and scientific materials and analyses used to support any proposed rule and an indication of whether such materials were peer-reviewed;

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<sup>3</sup> Attached and incorporated by reference.

<sup>4</sup> Attached and incorporated by reference.

<sup>5</sup> Responding to the March 29, 2016, WGA letter.

- A statement indicating how EPA solicited ideas about alternative methods of compliance and potential flexibilities in order to reduce the economic burden placed on affected entities;
- A statement indicating how EPA solicited information from Governors and state regulators as to whether or not the proposed rule will duplicate similar state requirements;
- A copy of a federalism assessment or the reason why EPA did not complete a federalism assessment;
- Explanation of the reason existing state programs are insufficient to address the concerns and an analysis of any conflicts in the proposed rule with state programs; and
- Analysis of financial assurance instruments that would satisfy any proposed EPA requirement.

EPA has not provided this information to Western Governors. To date, Governors and state regulators have been afforded only assurances that EPA's rule will not duplicate or preempt existing state regulations. EPA has, for example, expressed a, "belie[f] that the approach to the proposed rule that is currently under consideration will address the issues," raised by Governors.<sup>6</sup> Despite ongoing requests, no draft language has been provided to Western Governors to clarify EPA's approach. The Governors believe that EPA should provide Governors and state regulators an opportunity to review a pre-publication copy of the draft rule, model and formula for calculation of financial assurance amounts as that is the only manner to ensure EPA's engagement with states will be substantive and meaningful.

### **Federal Preemption of State Law**

Western Governors remain concerned that EPA's pending financial assurance regulation for the hardrock mining industry may preempt existing state regulations. This concern was raised in the March 29 WGA letter on this subject and has been consistently reiterated to the agency in subsequent communications. While we appreciate EPA's consistent expression of its intent not to pursue regulation having a preemptory effect,<sup>7</sup> absent clear communication from EPA regarding the substance of its planned rule proposal, our concerns remain substantively unaddressed.

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<sup>6</sup> June 9, 2016 letter from EPA to Western Governors, page 1.

<sup>7</sup> *Id.* at page 2.

## State Letters

EPA has cited the following four letters, addressed to Jim Berlow, Director of the Program Implementation and Information Division of the EPA Office of Resource Conservation and Recovery, as evidence that agency action under section 108(b) of CERCLA will not preempt existing state law:

- February 11, 2011 letter from the Office of the Alaska Attorney General;
- February 24, 2011 letter from the Water Quality Division of the Arizona Department of Environmental Quality;
- February 28, 2011 letter from the Office of the Colorado Attorney General; and
- February 28, 2011 letter from the New Mexico Environment Department.

EPA's use of these letters is evidence that five years ago the agency sought substantive state input for a then-contemplated CERCLA financial assurance rulemaking. These letters do not – in and of themselves – indicate that EPA's pending proposal will not be preemptive. While these letters are still valid and are not antiquated, EPA is taking them out of context. Western Governors view EPA's use of these letters as problematic for several reasons, including:

- The 2011 state letters were written to express four states' concerns over potential preemption and not as expressions of the states' beliefs that EPA financial assurance regulations would be patently non-preemptive in nature.
- The letters were not written in response to a draft EPA rule. They merely opine on existing state regulation and the need for EPA to avoid preempting state law.
- These letters establish that differences exist between various states' financial assurance regulations. EPA should view these differences as evidence that a blanket regulatory scheme is not workable. Further, due to the differences of states' regulations, pre-publication review of a draft rule would be useful to identify areas of potential preemption.
- These letters represent only four states. It is inappropriate for EPA to view them as representative of all western states.

## **Federalism Consultation Meeting**

EPA held a Federalism Consultation for CERCLA 108(b) meeting on May 18, 2016, consistent with Executive Order 13132.<sup>8</sup> This meeting was attended by representatives from WGA, ECOS, IMCC and ASTSWMO. We appreciate EPA's willingness to hold such a meeting, despite the agency's classification as an independent regulatory agency. Section 3, *Federalism Policymaking Criteria*, of President Clinton's Executive Order 13132 states in part:<sup>9</sup>

"When undertaking to formulate and implement policies that have federalism implications, agencies shall:

- Encourage [s]tates to develop their own policies to achieve program objectives and to work with appropriate officials in other states;
- Where possible, defer to [s]tates to establish standards;
- In determining whether to establish uniform national standards, consult with appropriate [s]tate and local officials as to the need for national standards and any alternatives that would limit the scope of national standards or otherwise preserve [s]tate prerogatives and authority; and
- Where national standards are required by [f]ederal statutes, consult with appropriate [s]tate and local officials in developing those standards."

We would contend that the Federalism Consultation meeting did not constitute substantive consultation with the states. Specific aspects of EPA's proposal were not discussed. When asked during this meeting whether EPA would provide draft language to states prior to publication, EPA staff were adamant in their response that they were not "allowed" to do so. EPA staff did not, however, state what statute or regulation precluded distribution of the draft to state partners.

Governors expect EPA's consultation process to respect states as sovereigns and full partners, not simply as stakeholders or members of the public. Western Governors believe that providing them a draft rule, model and formula for calculation of financial assurance amounts in the pre-publication stage is appropriate and the only manner to ensure the engagement of states is substantive and meaningful.<sup>10</sup>

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<sup>8</sup> Executive Order 13132 – Federalism (August 4, 1999).

<sup>9</sup> *Id.* at section 3(d)(1)-(4).

<sup>10</sup> WGA Policy Resolution 2014-09: *Respecting State Authority and Expertise*, section B(4)(b).

### **Additional Industry Sectors**

The January 29, 2016 D.C. Circuit court order directed EPA to determine by December 1, 2016 whether to issue notices of proposed rulemaking on CERCLA 108(b) financial assurance requirements for (a) chemical manufacturing; (b) petroleum and coal products manufacturing; and (c) electric power generation, transmission and distribution industries. During the May 18 federalism consultation meeting, EPA indicated the agency plans to utilize that meeting not only as satisfying state consultation regarding the hardrock mining industry, but also the other three industries for which EPA may seek to establish financial assurance requirements. The possibility that EPA would deem the May 18 meeting to satisfy consultation for all industries is unacceptable.

Given the importance of these industries for state economies – and the expectation that states will be respected as sovereign and full partners – Western Governors again request that substantive consultation with state partners be pursued by EPA in the manner set forth in WGA Policy Resolution 2014-09. This substantive consultation should far exceed that provided for the pending hardrock mining rule and should involve state review of draft language prior to any rule's proposal.

### **CONCLUSION**

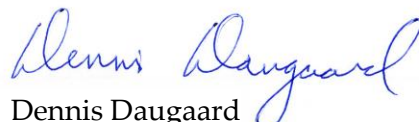
Development of – and consultation with state partners regarding – EPA's pending financial assurance rule for the hardrock mining sector has proven unsatisfactory. Though EPA has initiated opportunities for engagement between federal, state and industry partners regarding this proposal, those opportunities have not been transparent, participatory, or collaborative. State engagement opportunities have lacked the substantive depth necessary to alleviate concerns over potential preemption and duplication of state programs.

We request EPA provide Western Governors answers to the questions posed in the March 29 WGA letter to EPA, and reiterated herein, and that EPA provide Governors and state regulators with the draft rule, model and formula for calculation of financial assurance amounts for the hardrock mining financial assurance rule before its publication. Similarly, we request EPA substantively consult with states – in a manner consistent with WGA Policy Resolution 2014-09 – with regard to potential financial assurance regulation of the (a) chemical manufacturing; (b) petroleum and coal products manufacturing; and (c) electric power generation, transmission and distribution industries well in advance of rule publication.

Sincerely,



Steve Bullock  
Governor of Montana  
Chair, WGA



Dennis Daugaard  
Governor of South Dakota  
Vice Chair, WGA



WESTERN  
GOVERNORS'  
ASSOCIATION

**Western Governors' Association  
Policy Resolution 2014 - 07**

***Bonding for Mine Reclamation***

**A. BACKGROUND**

1. All Western states in which mining occurs have staff dedicated to ensuring that ongoing mine operations develop and follow appropriate reclamation plans.
2. An important component of a state's oversight of mine reclamation is the requirement that mining companies provide financial assurances in a form and amount sufficient to fund required reclamation if, for some reason, the company itself fails to do so. These types of financial assurances, often referred to generically as "bonding," protect the public from having to finance reclamation and closure if the company goes out of business, or fails to meet its reclamation obligation.
3. All Western states have developed regulatory bonding programs to evaluate and approve the financial assurances required of mining companies. The states have developed the staff and expertise necessary to calculate the appropriate amount of the bonds, based on the unique circumstances of each mining operation, as well as to make informed predictions of how the real value of current financial assurance may change over the life of the mine, and even post-closure.
4. Section 108(b) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9608(b), requires EPA to promulgate financial responsibility requirements for industrial facilities that take into account the risks associated with their use and disposal of hazardous substances. After the Sierra Club sued EPA for failing to timely comply with this section of CERCLA, a federal District Court in California ordered EPA to do so.<sup>1</sup>
5. In response to the Court's ruling, EPA announced in July, 2009 that it had selected hard-rock mining as the first industry sector for which it would undertake an analysis of whether federal bonding requirements under CERCLA Sec. 108<sup>2</sup> were needed.
6. Since EPA's 2009 announcement, Western Governors have expressed concern that any bonding requirements that EPA may develop for the hard-rock mining industry could be duplicative of state requirements, and could even pre-empt them entirely. The Governors have also questioned whether EPA has the resources to implement

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1 See Sierra Club v. Johnson, 2009 WL 2413094 (N.D. Cal. 2009)

2 See 74 Fed. Reg. 37213 (July 28, 2009).

reclamation bonding for hard-rock mines, since bond calculations usually reflect very site-specific reclamation needs, tasks and costs.

7. State mining agencies provided detailed comments to EPA in August 2011 on the structure and extent of each state's hard rock mining financial assurance requirements. EPA has yet to indicate if or what problems or gaps the agency has found in existing state requirements. Recently, EPA indicated that a rulemaking on this issue is not likely for at least another year.

## **B. GOVERNORS' POLICY STATEMENT**

1. Because mine reclamation is needed primarily to protect adjacent waters, it is both appropriate and consistent with Congressional intent to recognize the states' lead and primary role in regulating water related impacts of mine reclamation, including the associated bonding. See Clean Water Act, Sec. 101(b), 33 U.S.C. § 1251(b).
2. Western states have a proven track record in regulating mine reclamation in the modern era -- including for hard rock mines -- having developed appropriate statutory and regulatory controls, and are dedicating resources and staff to ensure responsible industry oversight.
3. In contrast, EPA currently has no staff dedicated to oversight of mine reclamation, or to the approval of bonding associated with mine reclamation. As a consequence, if EPA proceeds to promulgate bonding requirements for the hard-rock mining industry under CERCLA Sec. 108, it will have to create a new federal regulatory program -- an unnecessary investment of federal funds -- at a time when the federal government is trying to get its fiscal house in order.
4. Western Governors believe that states currently have financial responsibility programs in place that are working well, and that functional programs should not be duplicated or pre-empted by any program developed by EPA pursuant to Section 108(b) of CERCLA.

## **C. GOVERNORS' MANAGEMENT DIRECTIVES**

1. The Governors direct the WGA staff, where appropriate, to work with Congressional committees of jurisdiction and the Executive Branch to achieve the objectives of this resolution.
2. Furthermore, the Governors direct WGA staff to develop, as appropriate and timely, detailed annual work plans to advance the policy positions and goals contained in this resolution. Those work plans shall be presented to, and approved by, Western Governors prior to implementation. WGA staff shall keep the Governors informed, on a regular basis, of their progress in implementing approved annual work plans.



**Western Governors' Association  
Policy Resolution 2014-09**

***Respecting State Authority and Expertise***

**A. BACKGROUND**

1. Governors have significant responsibilities for the condition of land, air, forest, wildlife, and water resources, as well as energy and minerals development, for the lands within their state's borders.
2. States derive a number of independent rights and responsibilities under the U.S. Constitution. The 10<sup>th</sup> Amendment details the division of power between the federal government and states. "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."
3. Further, the U.S. Congress has, by statute, provided for the delegation to states of authority over certain federal program responsibilities. Many federal environmental programs are statutorily authorized to be delegated to states that wish to undertake those responsibilities.
4. According to the Environmental Council of the States (ECOS), states have chosen to accept responsibility for 96 percent of the primary federal environmental programs that are available for delegation to states. States currently execute the vast majority of natural resource regulatory tasks in America, including 96 percent of the enforcement and compliance actions and collection of more than 94 percent of the environmental quality data currently held by the U.S. Environmental Protection Agency.
5. Over time, the strength of the federal-state partnership in resource management has diminished. Federal agencies are increasingly challenging state decisions, imposing additional federal regulation or oversight and requiring unnecessary and often duplicative documentation. In many cases, these federal actions encroach on state prerogatives, especially in natural resource management. These federal actions neglect state expertise and diminish the statutorily-defined role of states in exercising their authority to manage delegated environmental protection programs.
6. The current fiscal environment exacerbates the tensions between states and federal agencies. Increasingly, states are required to expend their limited resources to operate regulatory programs over which they have less and less strategic control.

## B. GOVERNORS' POLICY STATEMENT

1. Except as mandated by Congress, the management of resources through the establishment of environmental standards and natural resource planning goals, as well as the means of achieving those standards and goals, should be left to the states.
2. Western Governors support early, meaningful and substantial state involvement in the development, prioritization and implementation of federal environmental statutes, policies, rules, programs, reviews, budget proposals, budget processes and strategic planning. The U.S. Congress and appropriate federal agencies should provide expanded opportunities for such involvement, particularly where states are working to help their federal partners to improve management of federal lands within their states' borders.
3. When a state is meeting the minimum requirements of a delegated program, the role of federal agencies should be limited to the provision of funding, technical assistance and research support. States should be free to develop implementation and enforcement approaches that make sense within their jurisdictions, without intervention by the federal government.
4. Prior to any intervention in state-run programs, federal agencies should consult with states in a meaningful way, and on a timely basis.
  - a. **Predicate Involvement:** Federal agencies should take into account state data and expertise in development and analysis of underlying science which serves as the legal basis for federal regulatory action. Accordingly, states merit greater representation on all relevant EPA Science Advisory Board (SAB) Committees and other panels advising the agency on scientific, technological, social and economic issues that inform its regulatory process.
  - b. **Pre-Publication / Federal Decision-making Stage:** Federal agencies should engage in early (pre-rulemaking) consultation with Governors and state regulators. This should include substantive consultation with states during development of rules or decisions and a review by states of the proposal before a formal rulemaking is launched (i.e. before such proposals are sent to the White House Office of Management and Budget for finalization).
  - c. **Post-Publication / Pre-Finalization Stage:** As they receive additional information from state agencies and non-governmental entities, Governors and other state officials should have the ability to engage with federal agencies on an ongoing basis to seek refinements to proposed federal regulatory actions prior to finalization.

d. **Rule / Policy Implementation:** Significant deference – as provided for by Congress in various enacting statutes (including the Clean Air Act, Clean Water Act, Resource Conservation and Recovery Act, among others) -- should be granted to states in formulation of state plans designed to implement delegated programs.

5. Western Governors have identified several specific areas where state environmental and natural resource management prerogatives are diminished by federal agencies' settlement of litigation without consultation with states. Where their roles and responsibilities are impacted states should, at a minimum, be consulted during settlement negotiations.

C. **GOVERNORS' MANAGEMENT DIRECTIVE**

1. The Governors direct the WGA staff, where appropriate, to work with Congressional committees of jurisdiction and the Executive Branch to achieve the objectives of this resolution.
2. Furthermore, the Governors direct WGA staff to develop, as appropriate and timely, detailed annual work plans to advance the policy positions and goals contained in this resolution. Those work plans shall be presented to, and approved by, Western Governors prior to implementation. WGA staff shall keep the Governors informed, on a regular basis, of their progress in implementing approved annual work plans.



## WESTERN GOVERNORS' ASSOCIATION

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March 29, 2016

Honorable Gina McCarthy  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W. (1101A)  
Washington, D.C. 20460

Dear Administrator McCarthy:

Many western states rely on the hard rock mining industry for economic development and employment. Western states where mining occurs have staff dedicated to mine permitting and compliance. They ensure that hard rock mining facilities are designed, constructed and operated to minimize risks to the environment and ensure reclamation. State regulators ensure proper mine closure on both private and public lands when the time comes. They coordinate with federal land agencies to ensure bonding is adequate.

A recent D.C. Circuit court decision approved a settlement agreement negotiated by the Environmental Protection Agency (EPA) and several non-governmental organizations. It requires EPA to publish a notice of proposed rulemaking pursuant to section 108(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) for the hard rock mining industry by December 1, 2016.<sup>1</sup>

Western Governors are concerned that EPA may impose additional financial assurance requirements on the hard rock mining industry. As stated in section A(3) of WGA Policy Resolution 2014-07, [\*Bonding for Mine Reclamation\*](#) (attached to these comments and incorporated by reference), western states have developed regulatory bonding programs to evaluate and approve financial assurance requirements for hard rock mining operations. Each western state has also developed detailed design, construction, operating, monitoring and permitting standards for hard rock mining facilities.

Governors have specific concerns with the potential introduction of EPA bonding requirements including:

- *Duplicative Federal Regulations* – Proposed federal requirements would duplicate existing state financial assurance requirements and could preempt existing state requirements for hard rock mining operations. They would require compliance with federal design, construction and

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<sup>1</sup> Order *In re: Idaho Conservation League, et al.*, No. 14-1149 (D.C. Cir. Jan. 29, 2016).

operating standards, to the exclusion of proven state standards. These additional financial assurance requirements would impair western economies and the hard rock mining industry in America. Section B(2) of WGA Policy Resolution 2015-09, [National Minerals Policy](#), reinforces the importance of the mining industry to both local and national economies. Reliable supplies of American minerals play a critical role in meeting national security needs.

- *Inappropriately Hampering Effective State Programs* – EPA has not indicated to states what, if any, problems or gaps the agency perceives in state financial assurance requirements. EPA has likewise failed to indicate that modern, state-driven standards necessitate any alternative program. Western states have the staff and expertise necessary to ensure environmental compliance, reclamation and site closure. Reclamation and closure bonding calculations are based on the unique circumstances of each mining operation, the local ecology and post reclamation land use. Local expertise allows for informed decisions on financial assurances required – based on real values over the life of the mine and after its closure. Many of the hard rock mines in the Western U.S. are on private or public lands, and at times on both. Only state regulatory agencies can oversee bonding and closure on sites with dual ownership and split mineral estate.
- *Failure to Recognize States' Primacy Role in Water Management* – Hard rock mine reclamation and bonding are required to protect water resources. States are identified under the Clean Water Act as the primary regulators of water. It is appropriate to recognize the lead and primary role of states in regulating water-related impacts incident to mine reclamation – including associated bonding requirements.

The referenced D.C. Circuit court order directed EPA to determine by December 1, 2016 whether to issue notice of proposed rulemaking on CERCLA 108(b) financial assurance requirements for (a) chemical manufacturing; (b) petroleum and coal products manufacturing; and (c) electric power generation, transmission and distribution industries. We note similar concerns regarding EPA's introduction of bonding requirements for these industries.

Prior to publishing a notice of proposed rulemaking for any of these industries EPA should consult with Governors and engage state regulators. This should occur early in the process – before rulemaking. Substantive consultation during development of rules or decisions should occur well before formal rulemaking is launched. This should include a review by Governors and state regulators of any proposals before they are sent to the White House Office of Management and Budget for finalization.

Honorable Gina McCarthy

March 29, 2016

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As part of early consultation on any proposals, we request that EPA provide Governors and state regulators the following:

- A detailed state consultation timeline and plan for obtaining individual state comments from Governors and state regulators;
- All technical and scientific materials and analyses used to support any proposed rule, denoting whether any such materials were peer-reviewed;
- A statement indicating how the EPA solicited ideas about alternative methods of compliance and potential flexibilities in order to reduce the economic burden placed on affected entities;
- A statement indicating how EPA solicited information from the Governors and state regulators as to whether the proposed rule will not duplicate similar state requirements;
- A copy of a federalism assessment or the reason why EPA did not complete a federalism assessment;
- Explanation of the reason existing state programs are insufficient to address the concerns and an analysis of any conflicts in the proposed rule with state programs; and
- Analysis of financial assurance instruments that would satisfy any proposed EPA requirement.

Western states are committed to environmental protection and to responsible and comprehensive regulation and bonding for hard rock mining operations. Western Governors urge you to consider the concerns raised here.

Sincerely,



Matthew H. Mead  
Governor of Wyoming  
Chairman, WGA



Steve Bullock  
Governor of Montana  
Vice Chair, WGA

cc: Honorable Lisa Murkowski, Chairwoman, Senate Energy & Natural Resources Committee;  
Honorable Maria Cantwell, Ranking Member, Senate Energy & Natural Resources Committee;  
Honorable Fred Upton, Chairman, House Energy & Commerce Committee;  
Honorable Frank Pallone, Ranking Member, House Energy & Commerce Committee